

No. _____

Some of the facts and circumstances surrounding the execution of this Assurance are as follows:

A. The Division of Consumer Affairs of the Department of Commerce and Insurance (the “Division”) and the Attorney General conducted an investigation of specific business practices of Respondent. These practices include having advertised that the Respondent was having an “emergency sell-off”, “mandated sale” and that “Credit Rebuilders” would be onsite to assist consumers in the rebuilding of their credit. It is the position of both the Division and the Tennessee Attorney General’s Office that said advertisements created unfair and deceptive representations to consumers and it is these practices of Respondent, and others detailed herein, that violated the Tennessee Consumer Protection Act of 1977, TENN. CODE ANN. §§ 47-18-101, *et seq.* (the “Act”).

B. Respondent neither admits nor denies any wrongdoing. Further, pursuant to TENN. CODE ANN. § 47-18-107(c), acceptance of this Assurance by Respondent shall not be considered an admission of any violation of the Act.

C. Therefore, pursuant to TENN. CODE ANN. § 47-18-107, Respondent desires to give this Assurance, and the Attorney General desires to accept it, in order to avoid the expense of litigation.

NOW, THEREFORE, acting pursuant to TENN. CODE ANN. § 47-18-107, Respondent gives, and the Attorney General accepts, the following assurances:

1. DEFINITIONS

As used in this Assurance and accompanying Agreed Order, the following words or terms shall have the following meanings:

- 1.1 “Assurance of Voluntary Compliance” or “Assurance” shall refer to this document entitled Assurance of Voluntary Compliance in the matter of *State of*

Tennessee v. Southeast Signature Motors, Inc., located at 2203 Northwest Broad Street, Murfreesboro, TN 37129.

- 1.2 “Consumer” means any person, a natural person, individual, governmental agency or other entities, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized.
- 1.3 “Division” or “Division of Consumer Affairs” shall refer to the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance.
- 1.4 “Offer(s)” or “Promotion(s)” shall refer interchangeably to all advertisements utilized by the Respondent including, but not limited to newspaper or other publication advertisements, flyers, posters, billboards, direct mailings and television, radio and/or internet advertisements.
- 1.5 “Petitioner”, “State of Tennessee”, or “Attorney General” shall refer to the Office of the Tennessee Attorney General and Reporter.
- 1.6 “Respondent” shall refer to Southeast Signature Motors, Inc., and/or any and all agents, affiliates and assigns of Southeast Signature Motors, Inc.
- 1.7 “Tennessee Consumer Protection Act”, “Consumer Act”, or “The Act” shall refer to the Tennessee Consumer Protection Act of 1977 and related statutes found at Tenn. Code Ann. §§ 47-18-101, *et seq.*

2. JURISDICTION

2.1 Jurisdiction of this Court over the subject matter herein and over the person and entity of the Respondent for the purposes of entering into and enforcing this Assurance and Agreed Order is admitted. Jurisdiction is retained by this Court for the purpose of enabling the parties to apply for such further orders and directions as may be necessary or appropriate for the construction, modification or execution of this Assurance and Agreed Order, including enforcement of compliance therewith and assessment of penalties for violation(s) thereof. Respondent agrees to pay all court costs and reasonable attorneys’ fees and any costs associated

with any successful petitions to enforce any provision of this Assurance and Agreed Order against Respondent.

3. VENUE

3.1 Pursuant to TENN. CODE ANN. § 47-18-107, venue as to all matters between the parties relating hereto or arising out of this Assurance is solely in the Circuit Court of Davidson County, Tennessee.

4. PERMANENT INJUNCTION

Accordingly, it is hereby agreed that upon approval of the Court, Respondent shall be permanently and forever enjoined and bound from directly or indirectly engaging in the practices set forth herein:

4.1 Respondent shall be prohibited from engaging in any or causing any other entity or person acting on its behalf to engage in misleading, unfair or deceptive acts or practices in the conduct of its business. Respondent shall fully comply with all provisions of the Tennessee Consumer Protection Act of 1977, TENN. CODE ANN. §§ 47-18-101, *et seq.*, including but not limited to §§ 47-18-104(a) and (b)(27), which prohibit unfair and deceptive acts and practices.

4.2 Respondent shall develop and maintain policies and procedures which mandate the procedures to be followed for all advertising endeavors undertaken by Respondent to ensure continuity in advertising and avoid violations of the Act and other applicable state and federal law.

4.3 Respondent shall be prohibited from advertising or causing any other entity or person acting on its behalf to advertise **“1st TIME EVER” OR “MANDATED SALE”** (or term or phrase of similar import), if such is not the case.

4.4 Without limiting the scope of paragraph 4.3, Respondent shall be prohibited from representing or causing another person or entity acting of its behalf to represent **“\$0 DOWN PAYMENT- 0% APR FINANCING- \$0 PAYMENTS TILL DEC. 2002”** (or terms or phrases of similar import) unless:

- (1) each such offer is available to every consumer who qualifies for such terms in a promotion; and
- (2) there is adequate disclosure in the same advertisement that some consumers may not qualify and specify any limitations that would prevent a consumer from qualifying.

If the offer or promotion is limited, all restrictions must be clearly and conspicuously disclosed in a reasonable manner in the original offer, advertisement or promotion.

4.5 Respondent shall be prohibited from advertising or causing another person or entity acting on its behalf to advertise **“All (Credit) Applications Accepted”** (or term or phrase of similar import), if such is not the case, provided that if any such advertisement contains a limitation, qualification or restriction that is disclosed in a reasonable manner, this prohibition shall not apply.

4.6 Respondent shall be prohibited from advertising or causing any other entity or person acting on its behalf to advertise; **“Don’t worry about being turned down...”** (or term or

phrase of similar import), if there are circumstances under which a consumer will not be extended credit, and references to those circumstances are not disclosed in a reasonable manner.

4.7 Without limiting the scope of paragraph 4.6, Respondent shall be prohibited from representing or advertising or causing any other entity or person acting on its behalf to represent or advertise “**Credit rebuilders on site!**” (or term or phrase of similar import), unless Respondent’s claim is in fact true and all such persons employed, whether temporarily or otherwise by the Respondent for such purposes are registered and bonded with the appropriate state agency pursuant to the Tennessee Credit Services Businesses Act, Tenn. Code Ann. § 47-18-1001, et seq.

4.8 In an advertisement or offer, Respondent shall be required to clearly, conspicuously and affirmatively disclose in a reasonable manner the types and categories of restrictions, qualifications, or other considerations that must be satisfied before the consumer or person is entitled to receive the benefits of the promotional offer.

4.9 If Respondent advertises that credit is “guaranteed” or “preapproved” (or term or phrase of similar import), Respondent shall be required to clearly and conspicuously disclose in a reasonable manner any qualifications or conditions to the approval.

4.10 Respondent shall be prohibited from representing or causing any other entity or person acting on its behalf to represent that an offer, promotion or advertisement is of limited duration, if such is not the case. Without limiting the scope of this provision, Respondent or any entity or person acting on its behalf shall be specifically prohibited from stating that an offer is valid only for a limited time (or terms or phrases of similar import) in any promotion if the offer does not in fact have a limited time duration. Respondent shall likewise be prohibited from

using or causing any other entity or person acting on its behalf to use the terms “**six days only**”, or phrase or term of similar import, in connection with an offer or promotion if that offer is not limited by the Respondent to that specific time period.

4.11 Respondent or any entity or person acting on its behalf shall be prohibited from using the terms or phrase “**EMERGENCY SELL-OFF!**” or other such terms or phrases otherwise indicating that the sale has been occasioned by a financial or natural catastrophe or other such occurrence that would otherwise lead consumers to believe that such event has resulted in savings, reduced prices, and/or changes in quantities of the Respondent’s goods, if that is not in fact the case.

4.12 Respondent shall, within 30 days upon entry of this Assurance, require that all sales personnel and any other persons employed by, or acting on behalf of, the Respondent who are/or will be engaged in advertising, sales, or marketing for the Respondent, attend a training session whereby said persons are instructed as to how to properly conduct financing, advertising, marketing and sales practices for the Respondent in conformity with the provisions of this Assurance.

5. PAYMENT OF ATTORNEYS’ FEES AND COSTS TO THE STATE

5.1 Respondent shall pay the sum of Three Thousand and 00/100 Dollars (\$3,000.00) to the State of Tennessee for attorneys’ fees and costs of investigation, prosecution and monitoring for compliance of this matter, which may be used for consumer protection purposes at the sole discretion of the Attorney General. Said payment shall be made by providing the

Attorney General or his designated representative a cashier's or certified check made payable to the "State of Tennessee - Attorney General" on the day of execution of this Assurance.

6. CIVIL PENALTIES

6.1 Respondent has been assessed with civil penalties in this matter in the amount of Ten Thousand, Five Hundred and 00/100 Dollars (\$10,500.00). The State has agreed to suspend payment of Five Thousand, Five Hundred and 00/100 Dollars (\$5,5000.00) of that sum upon Respondent's payment of Five Thousand and 00/100 Dollars (\$5,000.00) to the State of Tennessee as a civil penalty pursuant to TENN. CODE ANN. § 47-18-108(b)(3) and the payment for attorney fees as set out in provision #5.1 of this Assurance. Said payment shall be made by providing the Attorney General or his designated representative a cashier's or certified check made payable to the "State of Tennessee - Civil Penalties" on the day of execution of this Assurance. Should the Respondent commit any knowing violation of the specific terms of this Assurance, the remaining penalty sum of Five Thousand, Five Hundred and 00/100 Dollars (\$5,5000.00) , shall immediately become due and owing to the State for which execution may issue.

7. MONITORING AND COMPLIANCE

7.1 Upon written request, Respondent agrees to provide books, records and documents to the State, at any time, and further, to informally or formally under oath, provide testimony and other information to the State relating to compliance with this Assurance. Respondent shall make any requested information available within ten (10) business days after

receipt of the written request, at the Office of the Attorney General, Consumer Advocate and Protection Division, 425 Fifth Avenue North, Nashville, Tennessee 37243, or at any other location within the State of Tennessee that is mutually agreeable in writing to Respondent and the Attorney General. This section shall in no way limit the State's right to obtain documents, information, or testimony pursuant to any federal or state law, regulation, or rule.

7.2 The State of Tennessee has the right to test shop Respondent for the purpose of confirming compliance with this Assurance and state law. The test shoppers are not required to disclose that they are representatives of the State of Tennessee when making contact with Respondent. Further, the State of Tennessee may record any or all aspects of its solicitations or visit(s) with Respondent in audio or video form without notice to Respondent. The Respondent agrees to void any sale that is commenced by a test shopper at the conclusion of the sale upon notification that it was test shopping conducted by the State.

8. PRIVATE RIGHT OF ACTION

8.1 Pursuant to TENN. CODE ANN. §§ 47-18-109 and 47-18-107(e), nothing in this Assurance shall be construed to affect any private right of action, if any, that a consumer/person may hold against Respondent.

9. PENALTY FOR FAILURE TO COMPLY

9.1 Pursuant to TENN. CODE ANN. § 47-18-107(c), Respondent understands that upon execution and filing of this Assurance, any subsequent failure to comply with the terms hereof is *prima facie* evidence of a violation of the Tennessee Consumer Protection Act.

9.2 Pursuant to TENN. CODE ANN. § 47-18-107(f), Respondent understands that any knowing violation of the terms of this Assurance shall be punishable by civil penalties of not more than One Thousand Dollars (\$1,000.00) for each violation, in addition to any other appropriate penalties and sanctions, including but not limited to contempt sanctions and the imposition of attorneys' fees and costs. Respondent agrees to pay all court costs and attorneys' fees associated with any petitions to enforce this Assurance and Order against the Respondent which result in finding that Respondent knowingly violated this Assurance and Order.

10. REPRESENTATIONS AND WARRANTIES

10.1 Respondent represents and warrants that the execution and delivery of this Assurance is their free and voluntary act, that this Assurance is the result of good faith negotiations, and that Respondent agrees that the Assurance and terms thereof are fair and reasonable. The parties warrant that they will implement the terms of this Assurance in good faith. Further, no offer, agreements, or inducements of any nature whatsoever have been made to the Respondent by the State of Tennessee, its attorneys or any employee of the Attorney General's Office or the Division of Consumer Affairs to procure this Assurance.

10.2 Respondent represents the signatory to this Assurance has authority to act for and bind the Respondent.

10.3 Respondent will not participate in any activity to form a separate entity or corporation for the purpose of engaging in acts prohibited in this Assurance at the location listed above or for any other purpose which would otherwise circumvent any part of this Assurance or the spirit or purposes of this Assurance.

10.4 Neither Respondent nor anyone acting on its behalf shall state or imply or cause to be stated or implied that the Attorney General, the Division of Consumer Affairs, the Department of Commerce and Insurance, or any other governmental unit of the State of Tennessee approved, sanctioned, or authorized any practice, act, or conduct of the Respondent.

10.5 Acceptance of this Assurance by the State shall not be deemed approval by the State of any of Respondent's advertising or other business practices.

10.6 Within thirty (30) days of the entry of this Assurance, Respondent shall submit a copy of this Assurance to each of its officers, directors, and any third parties hired by Respondent who are involved in conducting sales or advertising on behalf of Respondent. Within forty-five (45) days of entry of this Assurance, Respondent shall provide the State with an affidavit verifying and certifying that all required persons have been supplied with a copy of this Assurance.

10.7 Respondent represents and warrants that no consumers have complained to Respondent about its "EMERGENCY SELL-OFF", "CREDIT REBUILDERS ON SITE", and/or "FIRST TIME EVER MANDATED SALE" of the February 2002 promotion indicating that the consumer did not understand the monetary and other conditions, restrictions and limitations on the offer or that he or she was denied credit which he or she understood was guaranteed. Further, Respondent represents and warrants that no consumers have complained to Respondent that they thought they would receive the services of a registered and bonded, credit service provider but the consumer was not able to receive those services as represented. Respondent understands that the State expressly relies upon this representation; if it is false,

misleading, deceptive or unfair in any way, the State may move to set aside this Assurance or request that the Respondent be held in contempt.

10.8 Respondent warrants and represents that Southeast Signature Motors, Inc. is the proper party to this Assurance and Agreed Order. Respondent further acknowledges that the State expressly relies upon this representation and warranty, and that if it is false, misleading, deceptive, unfair or inaccurate, the State has the right to move to vacate or set aside this Assurance and Agreed Order, and request that Respondent be held in contempt, if the State so elects.

10.9 Southeast Signature Motors, Inc., represents it is the true legal names of the person and entities entering into this Assurance of Voluntary Compliance and Agreed Order. Respondent understands that the State expressly relies upon this representation and if this representation is false, unfair, deceptive, inaccurate or misleading, the State shall have the right to move to vacate or set aside this Assurance and Agreed Order, and request that Respondent be held in contempt, if the State so elects.

10.10 This Assurance and Agreed Order may only be enforced by the parties hereto.

10.11 The titles and headers to each section of this Assurance are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the Assurance.

10.12 This document shall not be construed against the “drafter” because both parties participated in the drafting of this document.

10.13 This Assurance and Agreed Order constitute the complete agreement of the parties with regard to the resolution of the matters set forth in the State's Petition. This Assurance is limited to resolving only matters set forth in the State's Petition.

10.14 Nothing in this Assurance shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State of Tennessee. In addition, this Assurance shall not bar the State, the Motor Vehicle Commission or other governmental entity from enforcing laws, regulations or rules against Respondent.

10.15 This Assurance shall be binding and effective against Respondent upon Respondent's execution of the Assurance. In the event the court does not approve this Assurance, this Assurance shall be of no force and effect against the State of Tennessee.

10.16 Respondent has been advised of its right to legal counsel in connection with this matter. If Respondent declines to obtain the assistance of legal counsel, Respondent has expressly waived its right to counsel by executing this Assurance.

10.17 Nothing in this Assurance constitutes an agreement by the State of Tennessee concerning the characterization of the amounts paid hereunder for purposes of any proceeding under the Internal Revenue Code or any state tax laws.

10.18 Respondent waives and will not assert any defenses Respondent may have to any criminal prosecution or administrative action relating to the conduct described in the State's Petition, which defenses may be based, in whole or in part, on the Double Jeopardy or Excessive Fines Clauses of the Constitution or principles set forth in *Hudson v. United States*, 118 S. Ct. 488 (1997), and *Austin v. United States*, 509 U.S. 602 (1993), and agree that the amount that

Respondent has agreed to pay under the terms of this Assurance is not punitive in effect or nature for purposes of such criminal prosecution or administrative action.

10.19 No waiver, modification, or amendment of the terms of this Assurance shall be valid or binding unless made in writing, signed by the party to be charged, approved by this Honorable Court and then only to the extent set forth in such written waiver, modification or amendment.

10.20 Any failure by any party to this Assurance and Agreed Order to insist upon the strict performance by any other party of any of the provisions of this Assurance and Agreed Order shall not be deemed a waiver of any of the provisions of this Assurance and Agreed Order, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Assurance and Agreed Order and the imposition of any applicable penalties, including but not limited to contempt, civil penalties and/or the payment of attorneys fees to the State if applicable.

10.21 If any clause, provision or section of this Assurance shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Assurance and this Assurance shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not be contained herein.

11. COMPLIANCE WITH ALL LAWS, REGULATIONS AND RULES

11.1 Nothing in this Assurance and Order shall be construed as relieving Respondent of the obligation to comply with all state and federal laws, regulations and rules.

12. FILING OF ASSURANCE

12.1 Upon the execution of this Assurance, the Attorney General shall prepare and file in the Circuit Court for Davidson County a Petition, Agreed Order and this Assurance for the Court's approval. Respondent hereby waives any and all rights which it may have to be heard in connection with judicial proceedings upon the Petition. Respondent agrees to pay all costs of filing such Petition, Assurance and Agreed Order. Simultaneously with the execution of this Assurance, Respondent shall execute an Agreed Order. This Assurance is made a part of and is incorporated into the Agreed Order. The Respondent agrees that they consent to the entry of this Assurance and Agreed Order without further notice.

13. APPLICABILITY OF ASSURANCE TO RESPONDENT AND THEIR SUCCESSORS

13.1 Respondent agrees that the duties, responsibilities, burdens and obligations undertaken in connection with this Assurance shall apply to Southeast Signature Motors, Inc., its successors and assigns and any person or entity acting on its behalf.

14. NOTIFICATION TO STATE

14.1 For two (2) years following execution of this Assurance, Respondent shall notify the Office of the Attorney General, in writing, at least thirty (30) days prior to the effective date of any proposed material changes in its corporate structure, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or firm, the creation or dissolution or subsidiaries, or any other changes in Respondent's status that may affect compliance with obligations arising out of this Assurance.

14.2 Any notices required to be sent to the State or the Respondent by this Assurance shall be sent by United States mail, certified mail return receipt requested or other nationally recognized courier service that provides for tracking services and identification of the person signing for the document. The documents shall be sent to the following addresses:

For the State:

Deputy Attorney General
Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, Tennessee 37202
Telephone: (615) 741-1671

For the Respondent:

Southeast Signature Motors, Inc.
2203 N.W. Broad Street
Murfreesboro, Tennessee 37129
(615) 898-0700
Attention: David S. Harris

With a copy to:

David S. Zinn, Esquire
Hooper & Zinn, PLLC
109 Westpark Drive, Suite 310
Brentwood, Tennessee 37027
(615) 661-5472

15. COURT COSTS

15.1 All costs associated with the filing and distribution of this Assurance and any other incidental costs or expenses incurred thereby shall be borne by Respondent. No costs shall be taxed against the State as provided by TENN. CODE ANN. § 47-18-116. Further, no discretionary costs shall be taxed to either party.

FOR THE STATE OF TENNESSEE:

PAUL G. SUMMERS
Attorney General & Reporter
B.P.R. No. 6285

Leigh Ann Roberts
Assistant Attorney General
B.P.R. No.19800
Office of the Tennessee Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, TN 37202
(615) 532-9299

Approved by:

MARY C. CLEMENT
DIRECTOR, Division of Consumer Affairs
Department of Commerce and Insurance
500 James Robertson Parkway
5th Floor, Davy Crockett Tower
Nashville, TN 37243-0600
(615) 741-4737

FOR RESPONDENT:

DAVID S. ZINN
Attorney for Respondent
Hooper & Zinn, PLLC
109 Westpark Drive, Suite 310
Brentwood, Tennessee 37027
B.P.R. No. 2896
(615) 661-5472

Representative of Respondent
SOUTHEAST SIGNATURE MOTORS, INC.
Title: _____
Federal Taxpayer ID Number: _____
Social Security Number: _____
Address: _____

Telephone number: _____

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